

1 THE HONORABLE BENJAMIN H. SETTLE

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7 UNITED STATES DISTRICT COURT  
8 WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

9 BNSF RAILWAY COMPANY,

10 Plaintiff,

11 v.

12 CLARK COUNTY, WASHINGTON;  
13 MITCH NICKOLDS, in his official capacity  
as Director of Community Development of  
14 Clark County; KEVIN A. PRIDEMORE, in  
his official capacity as Code Enforcement  
Coordinator of Clark County; and  
15 RICHARD DAVIAU, in his official  
capacity as County Planner of Clark County,

16 Defendants.  
17

No.: 3:18-cv-5926-BHS

PLAINTIFF BNSF RAILWAY  
COMPANY'S RESPONSE TO  
MOTIONS TO INTERVENE BY THE  
COLUMBIA RIVER GORGE  
COMMISSION AND FRIENDS OF THE  
COLUMBIA RIVER GORGE, INC.

**NOTING DATE: December 14, 2018**

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19 Plaintiff BNSF Railway Company ("BNSF") submits the following response to the  
20 motions to intervene filed by the Columbia River Gorge Commission (ECF No. 23) and Friends  
21 of the Columbia River Gorge, Inc. (ECF No. 24) (collectively, the "Motions to Intervene").

22 As set forth herein, BNSF does not oppose granting the Motions to Intervene. Although  
23 BNSF disputes many of the proposed intervenors' legal arguments and factual contentions,  
24 particularly with regards to the merits of BNSF's claims, it is BNSF's view that intervention by  
25 these two entities will facilitate a resolution of the legal issues raised in BNSF's complaint.  
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BNSF RAILWAY CO.'S RESP. TO MOTS. TO INTERVENE  
BY COLUMBIA RIVER GORGE COMMISSION AND  
FRIENDS OF THE COLUMBIA RIVER GORGE, INC. - 1  
CASE NO. 3:18-CV-5926-BHS

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1 Accordingly, to the extent the Court determines the Columbia River Gorge Commission and the  
2 Friends of the Columbia Gorge's interests are sufficient, BNSF does not oppose granting the  
3 motions to intervene under the permissive intervention standard of Federal Rule of Civil  
4 Procedure 24(b). BNSF reserves all rights to oppose any legal arguments or dispute any factual  
5 contentions contained in the proposed intervenors' motions and supporting papers.  
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7 Respectfully submitted this 3<sup>rd</sup> day of December, 2018.

8 K&L GATES LLP

9 By /s/ James M. Lynch

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10 By /s/ J. Timothy Hobbs

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CERTIFICATE OF SERVICE

I hereby certify that on December 3, 2018, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the registered CM/ECF users in this case.

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